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Attorneys for Defendant, Mike Alexander

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

Thomas A. Dillon, Independent Fiduciary } CASE NO. CV-N-03-0119-HDM-VPC  
of Employers Mutual Plans, }  
Plaintiffs, }  
vs. }  
James Lee Graf, et al }  
Defendants. }

**DEFENDANT MICHAEL ALEXANDER'S ANSWER AND  
AFFIRMATIVE DEFENSES TO PLAINTIFFS COMPLAINT**

NOW COMES, Defendant, Michael Alexander by and through his attorney's,  
Lipson, Neilson, Cole, Seltzer & Garin, P.C., in response to Plaintiffs Complaint and  
state as follows:

**NATURE OF THE ACTION**

1. Defendant denies the allegations set forth in this paragraph 1 of Plaintiffs  
Complaint, as it lacks knowledge or information sufficient to form a belief as to the truth  
of the allegations and leaves Plaintiffs to their proofs. In further answer, Defendant  
denies any allegations of fraud.

2. Defendant denies the allegations set forth in this paragraph 2 of Plaintiffs  
Complaint, as it lacks knowledge or information sufficient to form a belief as to the truth  
of the allegations and leaves Plaintiffs to their proofs.

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3. Defendant denies the allegations set forth in this paragraph 3 of Plaintiffs Complaint, as it lacks knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Plaintiffs to their proofs. In further answer, Defendant denies any fraud or false representation pertaining to premiums paid by plan participants, if any.

4. Defendant denies the allegations set forth in this paragraph 4 of Plaintiffs Complaint, as it lacks knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Plaintiffs to their proofs.

#### **JURISDICTION AND VENUE**

5. Defendant denies the allegations set forth in this paragraph 5 of Plaintiffs Complaint, as it lacks knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Plaintiffs to their proofs.

6. Defendant denies the allegations set forth in this paragraph 6 of Plaintiffs Complaint, as it lacks knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Plaintiffs to their proofs.

#### **PARTIES**

7. Defendant denies the allegations set forth in this paragraph 7 of Plaintiffs Complaint, as it lacks knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Plaintiffs to their proofs.

#### **Defendants**

8-20. Defendant denies the allegations set forth in these paragraphs 8 through 20 of Plaintiffs Complaint, as it lacks knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Plaintiffs to their proofs.

21. Defendant denies the allegations set forth in paragraph 21 of Plaintiffs Complaint, as it lacks knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Plaintiffs to their proofs. In further answer, Defendant admits that he relied upon representations made by representatives of Employers Mutual Plans.

22. Defendant denies the allegations set forth in this paragraph 22 of Plaintiffs Complaint, as it lacks knowledge or information as to the number of retail insurance producers involved with Employers Mutual Plans or the activities of those retail insurance producers. In further answer, Defendant admits that this Defendant sold the subject health insurance to at least five clients.

23. - 24. Defendant denies the allegations set forth in these paragraphs 23 through 24 of Plaintiffs Complaint, as it lacks knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Plaintiffs to their proofs.

#### **AGENCY AND INFORMATION ALLEGATIONS**

25. Defendant denies the allegations set forth in this paragraph 25 of Plaintiffs Complaint, as it lacks knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Plaintiffs to their proofs. This answering Defendant specifically denies any act with others in concert, participation, or collaboration to authorize or ratify alleged acts of others and any intent to do so, if any.

26. Defendant denies the allegations set forth in this paragraph 26 of Plaintiffs Complaint, as it lacks knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Plaintiffs to their proofs.

27. Defendant denies the allegations set forth in this paragraph 27 of Plaintiffs Complaint, as it lacks knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Plaintiffs to their proofs. In further answer, Defendant specifically denies any participation in a RICO enterprise, if any and no intent was made to sell fraudulent health insurance or steal premiums if any.

#### **GENERAL FACTUAL ALLEGATIONS**

28. -53. Defendant denies the allegations set forth in this paragraphs 28-53 of Plaintiffs Complaint, as it lacks knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Plaintiffs to their proofs.

54. Defendant denies the allegations set forth in this paragraph 54 of Plaintiffs Complaint, as it lacks knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Plaintiffs to their proofs.

a. Defendant denies the allegations set forth in this paragraph, as it lacks knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Plaintiffs to their proofs.

b. Defendant denies the allegations set forth in this paragraph, as it lacks knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Plaintiffs to their proofs.

c. Defendant denies the allegations set forth in this paragraph, as it lacks knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Plaintiffs to their proofs.

d. Defendant denies the allegations set forth in this paragraph 53 of Plaintiffs Complaint, as it lacks knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Plaintiffs to their proofs.

e. Defendant denies the allegations set forth in this paragraph 53 of Plaintiffs Complaint, as it lacks knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Plaintiffs to their proofs.

f. Defendant denies the allegations set forth in this paragraph, as it lacks knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Plaintiffs to their proofs.

55. - 57. Defendant denies the allegations set forth in these paragraphs 55 -57 of Plaintiffs Complaint, as it lacks knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Plaintiffs to their proofs.

#### **FIRST CLAIM FOR RELIEF**

58. In response to the allegations contained in this paragraph 58 of Plaintiffs Complaint, Defendant reasserts and incorporates by reference its responses to paragraphs 1 through 57.

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59. -66. Defendant denies the allegations set forth in these paragraphs 59 through 66 of Plaintiffs Complaint, as it lacks knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Plaintiffs to their proofs.

#### **SECOND CLAIM FOR RELIEF**

67. In response to the allegations contained in this paragraph 67 of Plaintiffs Complaint, Defendant reasserts and incorporates by reference its responses to paragraphs 1 through 66.

68.-70. Defendant denies the allegations set forth in these paragraphs 68 through 70 of Plaintiffs Complaint, as it lacks knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Plaintiffs to their proofs.

#### **THIRD CLAIM FOR RELIEF**

71. In response to the allegations contained in this paragraph 71 of Plaintiffs Complaint, Defendant reasserts and incorporates by reference its responses to paragraphs 1 through 70.

72. -73. Defendant denies the allegations set forth in these paragraphs 72 through 73 of Plaintiffs Complaint, as it lacks knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Plaintiffs to their proofs.

#### **FOURTH CLAIM FOR RELIEF**

74. In response to the allegations contained in this paragraph 74 of Plaintiffs Complaint, Defendant reasserts and incorporates by reference its responses to paragraphs 1 through 73.

75. - 79. Defendant denies the allegations set forth in these paragraphs 75 through 79 of Plaintiffs Complaint, as it lacks knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Plaintiffs to their proofs.

#### **FIFTH CLAIM FOR RELIEF**

80. In response to the allegations contained in this paragraph 80 of Plaintiffs Complaint, Defendant reasserts and incorporates by reference its responses to paragraphs 1 through 79.

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81. - 83. Defendant denies the allegations set forth in these paragraphs 81 through 83 of Plaintiffs Complaint, as it lacks knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Plaintiffs to their proofs.

#### **SIXTH CLAIM FOR RELIEF**

84. In response to the allegations contained in this paragraph 84 of Plaintiffs Complaint, Defendant reasserts and incorporates by reference its responses to paragraphs 1 through 83.

85. - 87. Defendant denies the allegations set forth in these paragraphs 85 through 87 of Plaintiffs Complaint, as it lacks knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Plaintiffs to their proofs.

#### **AFFIRMATIVE DEFENSES**

For its Affirmative Defenses to Plaintiffs Complaint, Defendant, MICHAEL ALEXANDER, by and through its attorneys, Lipson, Neilson, Seltzer & Garin, L.L.C., states the following Affirmative Defenses:

##### **AFFIRMATIVE DEFENSE ONE**

1. Plaintiffs Complaint fails to state facts upon which Plaintiffs relies in stating a cause of action against Defendant and fails to include any specific allegations necessary to reasonably inform Defendant of the nature of the claims it is being called upon to defend.

##### **AFFIRMATIVE DEFENSE TWO**

1. Defendant is not responsible for intervening and superceding criminal acts and/or negligence of others.

##### **AFFIRMATIVE DEFENSE THREE**

1. As to this Defendant, venue in the State of Nevada is improper.
2. Accordingly, Plaintiffs Complaint should be dismissed and/or a no cause of action should be entered in favor of Defendant.

##### **AFFIRMATIVE DEFENSE FOUR**

1. As to this Defendant, the Court lacks jurisdiction, federal or supplemental.

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2. Accordingly, Plaintiffs Complaint should be dismissed and/or a no cause of action should be entered in favor of Defendant.

#### **AFFIRMATIVE DEFENSE FIVE**

1. The causes of action directed as to this Defendant are barred by the applicable statute of limitations.

2. Accordingly, Plaintiffs Complaint should be dismissed and/or a no cause of action should be entered in favor of Defendant.

#### **AFFIRMATIVE DEFENSE SIX**

1. Defendant's alleged actions or failure to act did not proximately cause any harm to Plaintiff and/or individual/entities claiming through Plaintiff.

2. Accordingly, Plaintiffs Complaint should be dismissed and/or a no cause of action should be entered in favor of Defendant.

#### **AFFIRMATIVE DEFENSE SEVEN**

1. Plaintiff and/or individual/entities claiming through Plaintiff, failed to mitigate alleged damages.

2. Accordingly, Plaintiffs Complaint should be dismissed and/or a no cause of action should be entered in favor of Defendant.

#### **AFFIRMATIVE DEFENSE EIGHT**

1. Plaintiff and/or individual/entities claiming through Plaintiff, are contributory negligent in their acts. Plaintiff and/or individual/entities claiming through Plaintiff, has caused all or a significant part of the damages alleged, if any, for which this answering Defendant might be responsible.

#### **AFFIRMATIVE DEFENSE NINE**

1. Defendant reserves the right to amend these Affirmative Defenses upon learning of any further acts, any further facts or information through discovery that would justify amendment of such defenses under the law and/or to rely on any other affirmative defenses raised by other parties.

#### **AFFIRMATIVE DEFENSE TEN**

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1. Plaintiffs complaint is an abuse of process and Defendant reserves the right to file counterclaims or separate complaints for abuse of process to recover damages, attorney fees, costs and punitive damages as might be provided under the law, facts and circumstances of this case.

**AFFIRMATIVE DEFENSE ELEVEN**

1. That it has been necessary for the Defendant to employ the services of an attorney to defend this action and a reasonable sum should be allowed Defendant as and for attorney's fees, together with his costs expended in this action.

**AFFIRMATIVE DEFENSE TWEELEVE**

1. Plaintiffs claims are preempted by ERISA.

**AFFIRMATIVE DEFENSE THIRTEEN**

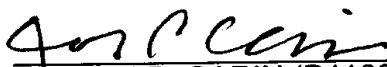
1. Defendant's liability, if any should be severable only and allocated to his percentage of fault.

WHEREFORE, Defendant MICHAEL ALEXANDER, respectfully requests that this Court deny Plaintiffs the relief sought, dismiss the Complaint with prejudice and award it all costs, including reasonable attorney fees, incurred in the defense of this action.

Respectfully submitted,

LIPSON, NEILSON, SELTZER & GARIN, L.L.C.

By:



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only  
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DATED: August 19, 2003

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